

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 767 OF 1994

BETWEEN:

GRACE CHEKUCHEKU ..... PLAINTIFF

and

RASHID BRAMAN ..... 1ST DEFENDANT

NATIONAL INSURANCE COMPANY .... 2ND DEFENDANT

Coram: TWEA, E.B., REGISTRAR  
Mazoe, Counsel for the Plaintiff  
Counsel for Defendant absent

ORDER

This action was brought by the plaintiff on her own behalf and that of other dependants of her deceased husband.

It was the evidence of the plaintiff that her deceased husband, Late Estone Chekucheku was a businessman. In the time of his death he engaged in the business of selling produce to ADMARC. She told this Court that he would make about K3,000 a month from the business. To this end she tendered payment vouchers from ADMARC, PEx1, on which was recorded the purchase price of maize supplied by the deceased on 11th June 1993.

By and large the evidence of PW2, the father of the deceased, was the same as that of PW1.

It is significant however, that both witnesses were not able to tell the age of the deceased. The evidence is also silent as to the nature of the earnings of the deceased. The evidence of PW1, that he would get K3,000 per month cannot be supported by PEx 1, which only shows gross takes - there is no element of expenses explained. It is apparent from the evidence that the deceased would buy and resell the produce. He was not on the evidence a farmer, i.e. the primary producer of the produce that he sold. It is also apparent that the deceased would hire transport to ferry the produce to the market. All these have an element of expenses. Further to this, I

have to bear in mind that produce buying and selling is seasonal, a matter which counsel for the plaintiff significantly omitted both in evidence and in his submissions.

I am now called upon to consider the extent of compensation that the plaintiff and the defendants would be entitled to for the loss of the deceased support. I have considered the submissions of counsel for which I am grateful. I note that he based his multiplier on the age quoted in the death certificate. I accept this as an official document and would accept the age assessed.

I have to consider that the active produce buying and selling period is about three (3) months in a year if limited to buying in a particular area, as there is variation in cropping seasons throughout the country. In this case the evidence shows that the deceased operated within the Luchenza area. I also take into account that the earnings would dwindle to zero during other periods of the year. Even if I grant that defendant would make gross profit of K3,000 per month, this would work out at K750 per month in a year. Using a multiplier of 20, I would get K180,000 as the deceased gross profit, this is without giving any allowance for drought situations which are a natural hazard in any produce dealing.

Be this as it may, at such gross profit per year one should pay tax about 40 - 45% of that gross profit which is K81,000 or K72,000 and then take into account the earners own use of the money, which as in this case has been said, he was building a house which I would put at about one-third of all his net profit, which would be his disposable income, this would put his net earnings after tax at K63,000 or K108,000 at 45% and 40% tax respectively, and after his personal use money at one-third of his disposable income he would have K72,000 or K42,000 to spend on his dependants. I would thus be obliged to look at his money earnings and what he would spend on his dependants at K72,000 being a more realistic figure for a businessman of such a calibre.

I thus grant the plaintiff and other dependants K72,000 for loss of dependancy with costs.

Pronounced in Chambers this 8th day of November 1994, at Blantyre.



E B Twea

REGISTRAR OF THE HIGH COURT